



9110-04-P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[Docket Number USCG-2012-0623]

RIN 1625-AA11

Regulated Navigation Area; Thames River Degaussing Range

Replacement Operations; New London, CT

AGENCY: Coast Guard, DHS.

ACTION: Temporary final rule.

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SUMMARY: The Coast Guard is temporarily establishing a regulated navigation area (RNA) on the navigable waters of the Thames River in New London Harbor, New London, CT. The RNA will establish speed and wake restrictions and allow the Coast Guard to prohibit all vessel traffic through the RNA during degaussing range replacement operations, both planned and unforeseen, that could pose an imminent hazard to persons and vessels operating in the area. This rule is necessary to provide for the safety of life on the navigable waters during the replacement of the degaussing range and its supporting system.

DATES: This rule is effective in the Code of Federal Regulations from [INSERT DATE 30 DAYS FROM PUBLICATION IN THE FEDERAL REGISTER] until October 31, 2014 and is effective with actual notice from November 1, 2012 until October 31, 2014.

ADDRESSES: Documents mentioned in this preamble are part of docket [USCG-2012-0623]. To view documents mentioned in this preamble as being available in the docket, go to <http://www.regulations.gov>, type the docket number in the "SEARCH" box and click "SEARCH." Click on Open Docket Folder on the line associated with this rulemaking. You may also visit the Docket Management Facility in Room W12-140 on the ground floor of the Department of Transportation West Building, 1200 New Jersey Avenue SE, Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: If you have questions on this rule, call or e-mail Petty Officer Joseph Graun, Prevention Department, U. S. Coast Guard Sector Long Island Sound, (203) 468-4544, [Joseph.L.Graun@uscg.mil](mailto:Joseph.L.Graun@uscg.mil); or Lieutenant Isaac M. Slavitt, Waterways Management, U.S. Coast Guard First District, (617) 223-8385, [Isaac.M.Slavitt@uscg.mil](mailto:Isaac.M.Slavitt@uscg.mil). If you have questions on viewing or submitting material to the docket, call Renee V. Wright, Program Manager, Docket Operations, telephone (202) 366-9826.

#### SUPPLEMENTARY INFORMATION:

##### Table of Acronyms

COTP	Captain of the Port
DHS	Department of Homeland Security
FR	Federal Register
NPRM	Notice of Proposed Rulemaking
RNA	Regulated Navigation Area

#### A. Regulatory History, Basis, and Purpose

The Coast Guard published a notice of proposed rulemaking (NPRM) for this temporary final rule on September 5, 2012 (77 FR 54495). We received two public comments on the NPRM, and no request for a public meeting.

Under the Ports and Waterways Safety Act, the Coast Guard has the authority to establish RNAs in defined water areas that are determined to have hazardous conditions and in which vessel traffic can be regulated in the interest of safety. See 33 U.S.C. 1231 and Department of Homeland Security Delegation No. 0170.1.

This rule establishes speed and wake restrictions and allows the Coast Guard to prohibit all vessel traffic through the RNA during degaussing range replacement operations, both planned and unforeseen, that could pose an imminent hazard to persons and vessels operating in the area. The Coast Guard is not now planning (and will actively avoid) full closures of the waterway; however, given the nature of the work it is important that this regulatory tool be available if circumstances change. This rule is necessary to provide for the safety of life on the navigable waters during the replacement of the degaussing range and its supporting system.

#### B. Discussion of Comments, Changes and the Temporary Final Rule

The Coast Guard received two public comments on the NPRM.

One comment was from the Connecticut Department of Energy and Environmental Protection. The department requested the RNA's

Slow-No-Wake wording be modified slightly to match up with the State definition of Slow-No-Wake providing consistency to mariner. The Coast Guard agrees with this comment and has modified the rule to be consistent with the State, changing the maximum speed from 5 knots to 6 knots and allowing higher minimum speed when necessary to maintain steerageway.

The other comment was from a local ferry service. First, they commented that a 5 knot speed restriction would not allow their vessels to maintain steerageway. They requested the ability to operate at a higher speed that maintains steerage and creates a minimum wake. The Coast Guard agrees with this comment and has changed the Slow-No-Wake verbiage to allow all vessels to maintain higher minimum speed when necessary to maintain steerageway. Second, they commented that the contractor should be required to make SECURITE calls during critical crane or diver operations so vessels could take further measures to ensure safety. The Coast Guard agrees with this recommendation and will instruct the contractor to make SECURITE calls during all crane and dive operations. Third, they commented that the contractor should be required to plan the project with a commitment that a portion of the waterway always be available for commercial traffic. This is not feasible, but every effort will be made to minimize closure periods. In addition they asked who will ensure the contractor has done their due diligence to prevent a need to close the waterway. The Captain of the Port (COTP) will monitor

this operation. The COTP will enforce the RNA only during degaussing range replacement operations, both planned and unforeseen, that the COTP recognizes as posing an imminent hazard to persons and vessels operating in the area. The COTP will suspend enforcement of the RNA during periods in which enforcement is not necessary for the safety of life on the navigable waters.

### C. Regulatory Analyses

We developed this rule after considering numerous statutes and executive orders related to rulemaking. Below we summarize our analyses based on these statutes and executive orders.

#### 1. Regulatory Planning and Review

This rule is not a significant regulatory action under section 3(f) of Executive Order 12866, Regulatory Planning and Review, as supplemented by Executive Order 13563, Improving Regulation and Regulatory Review, and does not require an assessment of potential costs and benefits under section 6(a)(3) of Executive Order 12866 or under section 1 of Executive Order 13563. The Office of Management and Budget has not reviewed it under those Orders.

The Coast Guard determined that this rulemaking is not a significant regulatory action for the following reasons: vessel traffic will only be excluded from the RNA for limited durations (if at all), speed and wake restrictions are not unduly restrictive, and the RNA covers a small geographic area. Advanced

public notifications will also be made to local mariners through appropriate means, which could include, but will not be limited to, Local Notice to Mariners and Broadcast Notice to Mariners.

## 2. Impact on Small Entities

The Regulatory Flexibility Act of 1980 (RFA), 5 U.S.C. 601-612, as amended, requires Federal agencies to consider the potential impact of regulations on small entities during rulemaking. The Coast Guard received no comments from the Small Business Administration on this rule. The Coast Guard certifies under 5 U.S.C. 605(b) that this rule will not have a significant economic impact on a substantial number of small entities. This rule would affect the following entities, some of which may be small entities: the owners or operators of vessels intending to enter or transit within the regulated area during a vessel restriction period.

The RNA will not have a significant economic impact on a substantial number of small entities for the following reasons: vessel traffic will only be excluded from the RNA for limited durations (if at all), speed and wake restrictions are not unduly restrictive, and the RNA covers a small geographic area. Additionally, before the effective period of a waterway closure, advanced public notifications will be made to local mariners through appropriate means, which could include, but would not be limited to, Local Notice to Mariners and Broadcast Notice to Mariners.

### 3. Assistance for Small Entities

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Public Law 104-121), we want to assist small entities in understanding this rule. If the rule would affect your small business, organization, or governmental jurisdiction and you have questions concerning its provisions or options for compliance, please contact the person listed in the FOR FURTHER INFORMATION CONTACT, above.

Small businesses may send comments on the actions of Federal employees who enforce, or otherwise determine compliance with, Federal regulations to the Small Business and Agriculture Regulatory Enforcement Ombudsman and the Regional Small Business Regulatory Fairness Boards. The Ombudsman evaluates these actions annually and rates each agency's responsiveness to small business. If you wish to comment on actions by employees of the Coast Guard, call 1-888-REG-FAIR (1-888-734-3247). The Coast Guard will not retaliate against small entities that question or complain about this rule or any policy or action of the Coast Guard.

### 4. Collection of Information

This rule will not call for a new collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501-3520).

### 5. Federalism

A rule has implications for federalism under Executive Order 13132, Federalism, if it has a substantial direct effect on the

States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. We have analyzed this rule under that Order and determined that this rule does not have implications for federalism.

#### 6. Protest Activities

The Coast Guard respects the First Amendment rights of protesters. Protesters are asked to contact the person listed in the "FOR FURTHER INFORMATION CONTACT" section to coordinate protest activities so that your message can be received without jeopardizing the safety or security of people, places or vessels.

#### 7. Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531-1538) requires Federal agencies to assess the effects of their discretionary regulatory actions. In particular, the Act addresses actions that may result in the expenditure by a State, local, or tribal government, in the aggregate, or by the private sector of \$100,000,000 (adjusted for inflation) or more in any one year. Though this rule will not result in such an expenditure, we do discuss the effects of this rule elsewhere in this preamble.

#### 8. Taking of Private Property

This rule will not cause a taking of private property or otherwise have taking implications under Executive Order 12630,



Governmental Actions and Interference with Constitutionally Protected Property Rights.

9. Civil Justice Reform

This rule meets applicable standards in sections 3(a) and 3(b)(2) of Executive Order 12988, Civil Justice Reform, to minimize litigation, eliminate ambiguity, and reduce burden.

10. Protection of Children

We have analyzed this rule under Executive Order 13045, Protection of Children from Environmental Health Risks and Safety Risks. This rule is not an economically significant rule and does not create an environmental risk to health or risk to safety that may disproportionately affect children.

11. Indian Tribal Governments

This rule does not have tribal implications under Executive Order 13175, Consultation and Coordination with Indian Tribal Governments, because it does not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes.

12. Energy Effects

This action is not a "significant energy action" under Executive Order 13211, Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use.

### 13. Technical Standards

This rule does not use technical standards. Therefore, we did not consider the use of voluntary consensus standards.

### 14. Environment

We have analyzed this rule under Department of Homeland Security Management Directive 023-01 and Commandant Instruction M16475.1D, which guide the Coast Guard in complying with the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321-4370f), and have determined that this action is one of a category of actions that do not individually or cumulatively have a significant effect on the human environment. This rule involves restricting vessel movement within a regulated navigation area. This rule is categorically excluded from further review under paragraph 34(g) of Figure 2-1 of the Commandant Instruction. An environmental analysis checklist supporting this determination and a Categorical Exclusion Determination are available in the docket where indicated under ADDRESSES.

### List of Subjects in 33 CFR Part 165

Harbors, Marine safety, Navigation (water), Reporting and recordkeeping requirements, Security measures, Waterways.

For the reasons discussed in the preamble, the Coast Guard amends 33 CFR Part 165 as follows:

PART 165--REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

1. The authority citation for Part 165 continues to read as follows:

Authority: 33 U.S.C. 1231; 46 U.S.C. Chapter 701, 3306, 3703; 50 U.S.C. 191, 195; 33 CFR 1.05-1, 6.04-1, 6.04-6, and 160.5; Pub. L. 107-295, 116 Stat. 2064; Department of Homeland Security Delegation No. 0170.1.

2. Add §165.T01-0623 to read as follows:

§165.T01-0623 Regulated Navigation Area: Thames River New London, CT.

(a) Location. The following area is a regulated navigation area: All navigable waters of the Thames River adjacent to Fort Trumbull State Park in New London, CT, from surface to bottom bounded to the north by a line connecting the following points: Point "1", 41°20'40" N, 072°05'32" W east to point "2", 41°20'40" N, 072°05'15" W then southeast to point "3", 41°20'31.8" N, 072°05'03" W then south to point "4", 41°20'28" N, 072°05'03" W then east to point "5", 41°20'30" N, 072°04'48" W; bounded to the east by following the shoreline south from point "5" to point "6", 41°20'19" N, 072°04'46" W; bounded to the south by a line connecting the following points: point "6" west to point "7", 41°20'17" N, 072°05'13" W then north to point "8" 41°20'27.2" N, 072°05'15" W then northwest to point "9" 41°20'29.5" N, 072°05'17" W then west to point "10" 41°20'29.5" N, 072°05'30" W then northwest to point "11" 41°20'31" N, 072°05'34" W; bounded

to the west by following the shoreline north from point "11" back to the start, point "1".

(b) Regulations. (1) The general regulations contained in 33 CFR 165.10, 165.11, and 165.13 apply.

(2) In accordance with the general regulations, entry into, anchoring, or movement within this zone, during periods of enforcement, is prohibited unless authorized by the Captain of the Port Long Island Sound (COTP) or the COTP's designated representative.

(3) During periods of enforcement, a "Slow-No-Wake" speed limit will be in effect. Vessels may not produce more than a minimum wake and may not attain speeds greater than six knots unless a higher minimum speed is necessary to maintain steerageway when traveling with a strong current. In no case may the wake produced by the vessel be such that it would create a danger of injury to persons, or damage to vessels or structures.

(4) During periods of enforcement, SECURITE calls must be made by all persons and vessels conducting crane or dive operations.

(5) During periods of enforcement, all persons and vessels must comply with all orders and directions from the COTP or the COTP's designated representative.

(6) During periods of enforcement, upon being hailed by a U.S. Coast Guard vessel by siren, radio, flashing light or other means, the operator of the vessel must proceed as directed.

(7) Persons and vessels may request permission to enter the zone during periods of enforcement on VHF-16 or via phone at 203-468-4401.

(8) Notwithstanding anything contained in this rule, the Rules of the Road (33 CFR Part 84 - Subchapter E, inland navigational rules) are still in effect and must be strictly adhered to at all times.

(c) Effective period. This rule is effective until October 31, 2014.

(d) Enforcement period. (1) Except when suspended in accordance with paragraph (d)(2) of this section, this regulated navigation area is in force 24 hours a day until October 31, 2014.

(2) Notice of suspension of enforcement: The COTP may suspend enforcement of the regulated navigation area. If enforcement is suspended, the COTP will cause notice of the suspension of enforcement to be made by all appropriate means to the affected segments of the public. Such means of notification may include, but are not limited to, Broadcast Notice to Mariners and Local Notice to Mariners. Such notifications will include the date and time that enforcement is suspended as well as the date and time that enforcement will resume.

(3) Violations of this regulated navigation area must be reported to the COTP, at 203-468-4401 or on VHF-Channel 16. Persons in violation of this regulated navigation area may be subject to civil or criminal penalties.

Dated: October 24, 2012

J. B. McPherson  
Captain, U.S. Coast Guard  
Acting Commander, First Coast Guard District

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